

**FLORIDA** | Board of Orthotists & Prosthetists

MINUTES

October 9, 2015

Teleconference

Department of Health

4042 Bald Cypress Way

Tallahassee, FL 32399-3257



Tommy Chmielewski, LPO  
***Chair***

Addam C. Griner, CPO  
***Vice-Chair***

Anthony Spivey, DBA  
***Executive Director***

1 **General Board Business started: 9:03 a.m.**

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- 3 **I.** The meeting was called to order by Mr. Chmielewski, Chair. Those present for all or part of the meeting included the
- 4 following:
- 5

6 **MEMBERS PRESENT:**

7 Tommy Chmielewski, LPO, Chair  
8 Addam C. Griner, CPO, Vice Chair  
9 Brett Saunders, CPO, FAAOP  
10 Ruphlal R. Gooljar, CPO, MA  
11 George H. Meyer, Jr.

12 **STAFF PRESENT:**

13 Anthony B. Spivey, DBA, Executive Director  
14 Joseph Lesho, Program Operations Administrator  
15 Michele Jackson, Regulatory Supervisor/Consultant  
16 Towanda Burnett, Compliance Officer  
17 Edith Rogers, Administrative Assistant II

18 Dr. Spivey informed the board that Dr. David Cheong submitted a letter of resignation from the board, which the governor  
19 has accepted.

20 **BOARD COUNSEL:**

21 Rachel Clark, Assistant Attorney General  
22 Office of Attorney General

23 **COURT REPORTER:**

24 For The Record  
25 Contact: Kay Fitchner  
26 (850) 222-5491

27 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline.*  
28 *AUDIO from this meeting can be found online: <http://floridasorthotistsprosthetists.gov/meeting-information/>*

29 **Section II started at 9:04 a.m.**

30 **II. APPROVAL OF MINUTES:**

31 The board reviewed the minutes of the August 20, 2015 Full Board meeting.

32 **Board Action:** Motion to accept the minutes was made by Mr. Saunders. Seconded by Mr. Griner.  
33 Vote: 5 ayes / 0 opposed; motion carried

34 **Section II concluded at 9:05 a.m.**

35 **Section III started at 9:05 a.m.**

36 **III. DISCIPLINE:**

37 **a. Informal Hearing – No Disputed Material Facts**

38 **i. Daniel Reuben Reid 2014-06486**

39 Mr. Reid was present and was not represented by counsel. A consultant, Alan Rosello was also present on  
40 Mr. Reid's behalf.

41 Mr. Chmielewski was recused due to participation on the Probable Cause Panel. Mr. Griner served as chair  
42 for this proceeding.

43 Mr. Gooljar recused himself, citing personal reasons that would prevent him from remaining unbiased.

44 Mr. Reid appeared before the board at the August 20, 2015 meeting in Orlando, FL; however, due to  
45 member absences and recusals, the board was unable to discuss and take action on Mr. Reid's case.

46 A one-count Administrative Complaint was filed March 23, 2015 alleging violation of s. 468.811(1)(f),  
47 F.S., for "violation of an order of the board, agency, or department previously entered in a disciplinary

hearing or failure to comply with a subpoena issued by the board, agency, or department.” Respondent violated a lawful order of the board by failing to pay fines and costs, and failing to provide proof of completion of continuing education as required by Final Order No. DOH-13-0550-S-MQA. Respondent submitted an Election of Rights form on which he disputed all allegations; however, Respondent was informed that the election was not in compliance with Rule 28-106.2015(5)(c), F.A.C. and s. 120.54(5)(b)5., F.S., because of failure to identify a material fact in dispute. The department recommended that Respondent’s license to practice as a Prosthetist-Orthotist be placed on suspension until he is fully compliant with Final Order DOH-13-0550-S-MQA.

**Discussion:**

**Action:** Motion to find that Respondent was properly served, and that Respondent was not entitled to a formal hearing because there were no material facts being disputed was made by Mr. Saunders. Seconded by Mr. Griner.

Vote: 3 yeas / 0 opposed; motion carried

**Action:** Motion to adopt the findings of fact as set forth in the Administrative Complaint was made by Mr. Saunders. Seconded by Mr. Griner.

Vote: 3 yeas / 0 opposed; motion carried

**Action:** Motion to accept the materials presented to the board into evidence was made by Mr. Saunders. Seconded by Mr. Griner.

Vote: 3 yeas / 0 opposed; motion carried

Mr. Rosello explained to the board that Mr. Reid’s health began deteriorating shortly after Final Order No. DOH-13-0550-S-MQA was filed. He stated that Mr. Reid contacted the patient to arrange repayment per the Settlement Agreement, but he could not pay according to the terms being asked by the patient. He then asked that Mr. Reid be granted an extension of time to comply with the Final Order.

Mr. Reid plead with the board, emphasizing that he’s never hurt anyone in over 40 years of practice.

Mr. Saunders asked if Mr. Reid has completed any of the obligations imposed by the Final Order, including the required payments. Ms. Burnett stated that he had not.

After additional discussion regarding the reasons why Mr. Reid has failed to comply with the Final Order, Mr. Saunders stated that he felt the department’s recommendation was appropriate.

**Action:** Motion to adopt the conclusions of law as stated in the Administrative Complaint and find that they constitute a violation of the practice act was made by Mr. Saunders. Seconded by Mr. Griner.

Vote: 3 yeas / 0 opposed; motion carried

Mr. Reid once again asked for an extension of time to comply with the Final Order. Ms. Clark stated that this hearing was not an appropriate time to request an extension, and that there are procedures in place to make such a request. Mr. Reid stated that he has requested an extension in the past and was denied. Ms. Clark stated that if the board denied his previous request, it was because they felt his reasons were insufficient.

Mr. Reid expressed concern that if his license is placed on suspension, then he will be unable to work and will not be able to earn the money needed to comply with the Final Order. Mr. Saunders suggested that he work in the capacity of support personnel, which does not require a license.

Mr. Saunders reiterated that he believes the department’s recommendation is appropriate and made a motion to that effect. Mr. Griner seconded.

Mr. Meyer asked Mr. Reid if any restitution had been paid to the patient. Mr. Reid stated no. Mr. Meyer then stated that, from the perspective of the board’s consumer member, he felt that the repayment should have been made.

**Action:** Motion to accept the Settlement Agreement was made by Mr. Saunders. Seconded by Mr. Griner.  
Vote: 3 yeas / 0 opposed; motion carried

Mr. Dierlam then discussed the department's Motion to Assess Costs in the amount of \$2372.70, which he recommended the board deny given Mr. Reid's financial situation.

**Action:** Motion to deny the department's Motion to Assess Costs was made by Mr. Saunders. Seconded by Mr. Griner.  
Vote: 3 yeas / 0 opposed; motion carried

**Section III concluded at 9:52 a.m.**

**Section IV started at 9:52 a.m.**

#### **IV. APPLICATIONS:**

**a. Lisa Dawn Holcombe – Orthotic Fitter**

Ms. Holcombe was present and was not represented by counsel. Ryan Dougherty, LPO, Ms. Holcombe's supervisor, was also present on Ms. Holcombe's behalf.

Ms. Holcombe submitted an application for licensure as an Orthotic Fitter, which the board office received on September 8, 2015. Upon review of the Verification of Clinical Experience Form (VOCE), it was determined that Ms. Holcombe may have been practicing without a license. The application and supporting documentation was submitted to the board for review and final action. The file was deemed complete on September 8, 2015.

**Discussion:**

Mr. Chmielewski asked Ms. Holcombe if she held an Orthotic Fitter Assistant license in Florida. Ms. Holcombe stated that she had taken the courses, but did not hold the license. Ms. Rogers told the board that there was no record of an application for an Orthotic Fitter Assistant application with the board office.

Mr. Chmielewski explained to Ms. Holcombe that in order to gain the experience necessary to obtain an Orthotic Fitter license, she must first work as a licensed Fitter Assistant.

The board agreed to allow Ms. Holcombe to amend her application to apply for an Orthotic Fitter Assistant license. Ms. Clark then advised the board that the Unlicensed Activity Unit should investigate the possible unlicensed activity, and that they would not need to take action on that aspect.

Mr. Dougherty asked if the board could reduce the two year experience requirement for Ms. Holcombe. Ms. Clark advised that such a request would have to come in the form of a formal petition.

**Action:** Motion to accept the amendment of the application to Orthotic Fitter Assistant, and approve the application for Orthotic Fitter Assistant licensure was made by Mr. Chmielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

**b. Kenneth R. Straub – Orthotic Fitter Assistant**

Mr. Straub was not present and was not represented by counsel.

Mr. Straub submitted an application for licensure as an Orthotic Fitter Assistant, which the board office received on March 9, 2015. Upon review of the file, it was determined that Mr. Straub may have been practicing without a license. The application and supporting documentation was submitted to the board for review and final action. The file was deemed complete on September 11, 2015.

**Discussion:**

Mr. Chmielewski asked if Mr. Straub's appearance was required. Ms. Clark stated no.

Mr. Chmielewski stated that he had questions regarding Mr. Straub's DUI. Ms. Clark clarified that the DUI was downgraded to Reckless Driving.

Mr. Lesko asked the board to review the possible unlicensed activity.

After review and discussion, the board agreed that the application for Orthotic Fitter Assistant may need to be amended to clarify the VOCE form to help eliminate confusion and reduce cases of possible unlicensed activity coming before the board.

Ms. Clark then recommended that the board vote to approve or deny Mr. Straub's application, and let the Unlicensed Activity Unit investigate that aspect of the file.

**Action:** Motion to approve the application for Orthotic Fitter Assistant licensure was made by Mr. Chmielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

**Section IV concluded at 10:23 a.m.**

**Section V started at 10:23 a.m.**

## **V. RATIFICATIONS:**

### **a. Licensure –**

#### **i. Orthotists/Prosthetists:**

**Action:** Motion to ratify the issuance of Orthotists/Prosthetists license numbers 299 through 304 was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

#### **ii. Prosthetists:**

**Action:** Motion to ratify the issuance of Orthotists license numbers 167 and 168 was made by Mr. Chielewski. Seconded by Mr. Saunders.  
Vote: 5 yeas / 0 opposed; motion carried

#### **iii. Orthotists:**

**Action:** Motion to ratify the issuance of Orthotists license number 269 was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

#### **iv. Orthotic Fitter:**

No Orthotic Fitter licenses were issued during this period.

#### **v. Orthotic Fitter Assistant:**

**Action:** Motion to ratify the issuance of Orthotic Fitter Assistant license number 330 was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

#### **vi. Pedorthists:**

**Action:** Motion to ratify the issuance of Pedorthist license number 232 was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

#### **vii. Orthotic Resident:**

**Action:** Motion to ratify the issuance of Orthotic Resident license numbers 149 through 155 was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

**viii. Prosthetic Resident:**

**Action:** Motion to ratify the issuance of Prosthetic Resident license numbers 90 through 91 was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

**b. Continuing Education –**

**i. Providers and Courses Approved by Board Staff**

**Action:** Motion to ratify the Continuing Education Providers and Courses Approved by Board Staff was made by Mr. Chielewski. Seconded by Mr. Griner.  
Vote: 5 yeas / 0 opposed; motion carried

Section V concluded at 10:29 a.m.

Section VI started at 10:29 a.m.

**VI. PROSECUTION REPORT:**

Mr. Dierlam informed the board that they no longer had any open cases, as Mr. Reid's case was the last case pending.

Section VI concluded at 10:29 a.m.

Section VII started at 10:29 a.m.

**VII. CHAIR/VICE-CHAIR REPORT:**

**a. Future Agenda Items:**

Mr. Chmielewski discussed his attendance of the department's annual Chair/Vice Chair meeting. Mr. Griner had nothing to report.

Section VII concluded at 10:31 a.m.

Section VIII started at 10:31 a.m.

**VIII. EXECUTIVE DIRECTOR'S REPORT:**

**a. Are You Renewal Ready? – Memo:** Dr. Spivey presented a memorandum from the department's Bureau of Operation, which provided an overview of the renewal rates for the licenses of the profession.

**b. Revised 2016 Board Meeting Dates:**

- i. January 29 – Orlando**
- ii. April 22 – Teleconference Call**
- iii. July 13 – Orlando (FAOP)**
- iv. October 7 – Teleconference Call**

Mr. Chmielewski asked if the board was required to meet in person at least once per year. Ms. Clark stated that they are required to meet at least once per year, but they are not necessarily required to meet in person.

The board had no objections to the dates presented.

**c. Letter from NCOPE:** Dr. Spivey presented a letter from NCOPE as an FYI.

**d. MQA SWOT Analysis:** Dr. Spivey discussed the SWOT Analysis presentation that was initially given at the Chair/Vice Chair meeting. He explained that one of the challenges facing the department is garnering interest from consumers to serve on the boards. He told the board that if they have any recommendations for consumer board members, they should be referred to the governor's office.

Section VIII concluded at 10:43 a.m.

Section IX started at 10:43 a.m.

## IX. BOARD COUNSEL REPORT:

- c. **Anti-Trust Dental North Carolina Board Presentation:** Ms. Clark gave an overview of the antitrust presentation that was initially given at the Chair/Vice Chair meeting. She explained that the boards should be promoting free and open competition, and that boards must operate under supervision to ensure they are not closing off the market. FL is different because members are appointed by the governor; board is not sovereign or protected from suits solely because they are on the board, must act with supervision (i.e., rulemaking through the Joint Administrative Procedures Committee); potential for supervision is not sufficient, it needs to actually exist; supervisor cannot be active market participant.
- a. **Rules Status Report – October 2015:** Ms. Clark provided a status update on rules that the board recently voted to amend or repeal.
- b. **2015-2016 Annual Regulatory Plan:** Ms. Clark explained that the 2015-2016 Annual Regulatory Plan is available for viewing on the department's website, <http://www.floridahealth.gov>.

Mr. Chmielewski asked how the board would be apprised of proposed legislative changes. Ms. Clark said that legislative changes go through the board office, and Dr. Spivey said that he would be sure to keep the members informed of any legislation that may pertain to the profession.

Section IX concluded at 10:57 a.m.

Section X started at 10:57 a.m.

## X. OLD BUSINESS:

No old business.

Section X concluded at 10:57 a.m.

Section XI started at 10:57 a.m.

## XI. NEW BUSINESS:

No new business.

Section XI concluded at 10:57 a.m.

Section XII started at 10:57 a.m.

## XII. COMMITTEE REPORTS

### a. Budget – George Meyer:

#### i. Budget Report:

Dr. Spivey discussed the budget report which was presented to the board members.

### f. Legislation – Addam Griner: Nothing to report.

Mr. Griner disconnected from the call at 11:01 a.m.

### b. Continuing Education – Tommy Chmielewski: Nothing to report.

### c. Credentials – Brett Saunders: Nothing to report.

### d. Disciplinary Compliance – Tommy Chmielewski: Mr. Chmielewski told the board that there are two cases on which he's working with Ms. Burnette.

### e. Healthy Weight – Ruphlal Gooljar: Mr. Gooljar provided the board with an overview of the Healthiest Weight Liaison meeting, and discussed the department's Healthiest Weight Strategy Development guide.

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**h. Rules – Mr. Saunders:**

- i. Letter from ABC:** Presented letter from ABC regarding training qualifications for support personnel Mr. Saunders explained why he feels an additional level should be added to the definition of “Support Personnel.”

Ms. Clark explained that such a change would require a statutory change, as the board does not have authority to make the change by rule.

Ms. Clark then stated that she could work with board staff to prepare an amended Orthotic Fitter Assistant application to clarify the VOCE form, which can be presented at a future meeting.

**g. Probable Cause – George Meyer:**

- i. Stats:** Nothing to report.

- i. Unlicensed Activity – Mr. Gooljar:** Mr. Gooljar stated that he spoke to Sidronio Casas in the department’s Unlicensed Activity Unit, and was informed that there was only one Cease & Desist issued from July 1, 2015 through September 30, 2015.

**Section XI concluded at 11:18 a.m.**

**Section XII started at 11:18 a.m.**

**XI. NEXT MEETING DATE:** January 29, 2016 – Orlando

**XII. ADJOURNMENT**

**Board Action:** Motion to adjourn the meeting was made by Mr. Chmielewski. Seconded by Mr. Saunders.

Vote: 4 yeas / 0 opposed; motion carried

**General Board Business concluded at 11:20 a.m.**

**The meeting was adjourned at 11:20 a.m.**